

dB BROADCAST LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

1.1.1 "**dB Broadcast**" means dB Broadcast Limited, a company incorporated under the laws of England (Company No: 02709677) with its registered office at Kestrel House, Sedgeway Business Park, Witchford Ely, Cambridge, CB6 2HY;

1.1.2 "**Business Day**" means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

1.1.3 "**Charges**" means the charges payable by Customer for the supply of the Goods and Services in accordance with clause 7 below;

1.1.4 "**Conditions**" means these terms and conditions as amended from time to time in accordance with clause 15.1 below;

1.1.5 "**Contract**" means, in relation to each Order, the legally binding contract between dB Broadcast and Customer, incorporating these Conditions, covering the supply of the Goods and/or Services that are the subject of such Order;

1.1.6 "**Customer**" means the person to whom dB Broadcast supplies the Goods and/or Services;

1.1.7 "**Deliverables**" means all documents, products and materials developed by dB Broadcast as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

1.1.8 "**Goods**" means the goods (if any) to be provided by dB Broadcast pursuant to a Contract as set out in the corresponding Order;

1.1.9 "**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including

know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

1.1.10 "**Order**" means Customer's order for the supply of Goods and/or Services, as set out in Customer's purchase order form or in Customer's written acceptance of dB Broadcast's quotation as the case may be;

1.1.11 "**Services**" means the services (if any) including without limitation any Deliverables to be provided by dB Broadcast pursuant to a Contract as set out in the corresponding Order;

1.1.12 "**Specification**" means the description or specification for the Goods and/or Services (and any associated Deliverables) set out in the corresponding Order.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and

1.2.2 a reference to "**writing**" or "**written**" includes faxes and emails.

2 BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by Customer to purchase the Goods and/or Services in accordance with these Conditions. Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when dB Broadcast issues a written acceptance of the Order, at which point and on which date the corresponding Contract shall be deemed to have come into existence.

2.4 Any samples, drawings, descriptive matter, or advertising produced by dB Broadcast and any descriptions or illustrations contained in dB Broadcast's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 Any quotation given by dB Broadcast shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3 SUPPLY OF GOODS

3.1 dB Broadcast shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Contract, all relevant dB Broadcast and Customer reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable).

3.2 dB Broadcast shall deliver the Goods to the location set out in the Contract or such other location as the parties may agree ("**Delivery Location**") at any time after dB Broadcast notifies Customer that the Goods are ready for delivery.

3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

3.4 Any dates quoted for delivery are approximate only, and the time of delivery shall not be of the essence. dB Broadcast shall not be liable for any delay or failure in delivery of the Goods that is caused by Customer's failure to provide dB Broadcast with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.5 The risk in the Goods shall pass to Customer on completion of delivery. Title to the Goods shall not pass to Customer until dB Broadcast has received payment in full (in cash or cleared funds) of the corresponding Charges. Until title to the Goods has passed to Customer, Customer shall hold the Goods on a fiduciary basis as dB Broadcast's bailee, stored separately from all other goods held by Customer so that they remain readily identifiable as dB Broadcast's property and Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods. However, Customer may resell or use such Goods in the ordinary course of its business.

- 3.6 If, before title to the Goods passes to Customer, Customer becomes subject to any of the events listed in clause 11.1.2 below, or dB Broadcast reasonably believes that any such event is about to happen and notifies Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy dB Broadcast may have, dB Broadcast may at any time require Customer to deliver up the Goods and, if Customer fails to do so promptly, enter any premises of Customer or of any third party where the Goods are stored in order to recover them.
- 3.7 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by Customer, Customer shall indemnify dB Broadcast against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by dB Broadcast in connection with any claim made against dB Broadcast for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with dB Broadcast's use of such Specification. This clause 3.7 shall survive termination of the Contract.
- 3.8 dB Broadcast reserves the right to amend the Goods and/or the Specification if required by any applicable statutory or regulatory requirements.

4 SUPPLY OF SERVICES

- 4.1 dB Broadcast shall use all reasonable endeavours to provide the Services in all material respects in accordance with the Specification and to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.2 dB Broadcast reserves the right to amend the Services and/or the Specification if required by any applicable statutory or regulatory requirements.

5 CHANGE CONTROL

- 5.1 If either party wishes to change any aspect of the Goods, the Services or the Deliverables associated with any Contract, it shall submit details of the requested change to the other in writing. dB Broadcast shall, within a reasonable time of such submission, provide a written proposal to Customer setting out:
- 5.1.1 the likely time required to implement the change;

- 5.1.2 any variations to the Charges arising from the change; and
- 5.1.3 any other impact of the change on the terms of the Contract.
- 5.2 If, following receipt of the proposal, Customer wishes dB Broadcast to proceed with the change, dB Broadcast shall not be obliged to do so unless and until the parties have agreed in writing the necessary variations to the Charges and/or the Contract necessary to document and implement the change.

6 WARRANTIES AND REMEDIES

- 6.1 dB Broadcast warrants to Customer that the Services will be provided using reasonable care and skill using personnel who are suitably skilled and experienced to perform tasks assigned to them and that, on delivery and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Goods and the results of the Services, including any Deliverables shall:
 - 6.1.1 conform in all material respects with the Specification;
 - 6.1.2 be free from material defects in design, material and workmanship; and
 - 6.1.3 be fit for any purpose held out by dB Broadcast.
- 6.2 Subject to clause 6.3 below, if:
 - 6.2.1 Customer gives notice in writing to dB Broadcast during the Warranty Period within a reasonable time of discovery that some or all of the Goods and/or the results of the Services, including any Deliverables, do not comply with the warranty set out in clause 6.1 above; and
 - 6.2.2 dB Broadcast is given a reasonable opportunity to examine the defective items; and
 - 6.2.3 Customer, if asked to do so by dB Broadcast, returns the defective items to dB Broadcast's place of business at Customer's cost;then dB Broadcast shall, at its option, either repair or replace the defective items and/or repeat the defective Services, or refund the price of the defective items in full.
- 6.3 dB Broadcast shall not be liable for any failure to comply with the warranties set out in clause 6.1 above in any of the following events:

- 6.3.1 Customer makes any further use of the defective items after giving notice in accordance with clause 6.2 above;
- 6.3.2 the defect arises because Customer failed to follow dB Broadcast's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the relevant items or, if there are no such instructions, good trade practice regarding the same;
- 6.3.3 the defect arises as a result of dB Broadcast following any drawing, design or Specification supplied by Customer;
- 6.3.4 Customer alters or repairs the relevant items without the written consent of dB Broadcast; or
- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions.
- 6.4 Except as provided in this clause 6, dB Broadcast shall have no liability to Customer in respect of any failure to comply with the warranties set out in clause 6.1 above.
- 6.5 Customer warrants that it shall:
 - 6.5.1 ensure that the contents of the Order and any information it provides in any Specification it provides are complete and accurate;
 - 6.5.2 cooperate with dB Broadcast in all matters relating to the delivery of the Goods and/or Services; and
 - 6.5.3 provide dB Broadcast with such information and materials as dB Broadcast may reasonably require in order to supply the Goods and/or Services, and ensure that such information is accurate in all material respects.
- 6.6 If dB Broadcast's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation ("**Customer Default**") dB Broadcast shall, without limiting its other rights or remedies, have the right to suspend delivery of the Goods and/or Services until Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its

obligations to the extent the Customer Default prevents or delays dB Broadcast's performance of any of its obligations.

7 CHARGES AND PAYMENT

7.1 The Charges for the Goods and Services shall be set out in the Contract or, if no price is quoted, the price set out in dB Broadcast's published price list for Goods and rate card for Services in force as at the date the Contract came into existence. Unless otherwise stated in the Contract, the Charges are exclusive of the costs of packaging, insurance and transport.

7.2 dB Broadcast shall be entitled to charge Customer for any expenses reasonably incurred by the individuals whom dB Broadcast engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by dB Broadcast for the performance of the Services, and for the cost of any materials.

7.3 dB Broadcast may invoice Customer at any time following completion of the delivery of the Goods and/or Services. All amounts payable by Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being which shall be payable in addition. Customer shall pay the invoiced amounts within 30 days of the date of the invoice to a bank account nominated in writing by dB Broadcast.

7.4 Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and Customer shall not be entitled to assert any credit, set-off or counterclaim against dB Broadcast in order to justify withholding payment of any such amount in whole or in part. dB Broadcast may, without limiting its other rights or remedies, set off any amount owing to it by Customer against any amount payable by dB Broadcast to Customer.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in the Goods and all Intellectual Property Rights in or arising out of or in connection with the Services, including Intellectual Property Rights in Deliverables, shall be owned by dB Broadcast.

9 LIABILITY

- 9.1 The following provisions set out the entire liability of dB Broadcast (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Customer in respect of: (a) any breach of the Contract; (b) any use made by Customer of the Goods and/or the results of the Services, including Deliverables; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 dB Broadcast shall not be liable, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of goods; (f) loss of contract; (g) loss of use; (h) loss or corruption of data or information; (i) any special, indirect or consequential loss or damage.
- 9.3 dB Broadcast's total aggregate liability under each Contract arising in connection with the performance or contemplated performance of such Contract in any 12 month period, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited to the total Charges paid by Customer to dB Broadcast under such Contract in such 12 month period.

10 CONFIDENTIALITY

- 10.1 Each party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall ensure their employees shall keep confidential all company information received from the Disclosing Party that would be regarded as confidential by a reasonable

business person and shall not disclose such information to any third party under any circumstances. This clause 10 shall survive termination of the Contract.

11 TERMINATION

11.1 dB Broadcast may terminate the Contract immediately upon notice in writing to Customer in any of the following circumstances:

11.1.1 in the event that Customer is in breach of its obligations under the Contract and, in the case of a breach which is not persistent and can be remedied, Customer has not remedied such breach within 10 Business Days of receipt of a written notice specifying the breach and requiring its remedy; or

11.1.2 in the event that Customer goes into compulsory or voluntary liquidation (except for the purposes of solvent reconstruction or amalgamation) or a receiver, administrative receiver or administrator is appointed in respect of the whole or any part of its assets or in the event that it makes an assignment for the benefit of or composition with its creditors generally or engages in or suffers any similar procedure in any jurisdiction.

11.2 If Customer becomes subject to any of the events listed in clause 11.1.2, or dB Broadcast reasonably believes that Customer is about to become subject to any of them and notifies Customer accordingly, then, without limiting any other right or remedy available to dB Broadcast, dB Broadcast may cancel or suspend all further deliveries under the Contract without incurring any liability to Customer, and all of dB Broadcast's unpaid invoices shall become immediately due.

12 CONSEQUENCES OF TERMINATION

12.1 On termination of the Contract for any reason:

12.1.1 dB Broadcast shall cease performing the Services and delivering the Goods and Customer shall immediately pay to dB Broadcast all of dB Broadcast's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, dB Broadcast shall submit an invoice, which shall be payable by Customer immediately on receipt;

12.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

12.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13 NOTICES

13.1 Any notice, consent, agreement or official communication under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Order or Contract, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Order or Contract. A notice, consent, agreement or official communication delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 09.00 on the first Business Day following delivery). A correctly addressed notice, consent, agreement or official communication sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice, consent, agreement or official communication sent by email shall be deemed to have been received at the time of transmission provided that no message is received by the sender evidencing a delivery failure.

14 DISPUTE RESOLUTION

14.1 In the event of any dispute or difference arising out of or in connection with the Contract which the parties cannot resolve by amicable negotiation within 6 weeks of the onset of the dispute, the parties agree prior to any litigation first to try in good faith to settle the dispute or difference by mediation in accordance with the Mediation Rules published by the Centre for Dispute Resolution ("**CEDR**"). In the absence of agreement as to the appointment of the mediator, the mediator shall be nominated by CEDR. The parties agree to bear equally the administrative costs of the mediation and the mediator's fees. Each party further agrees to bear its own fees and costs. The venue for any mediation shall be England. Nothing in these Conditions shall prevent either party from seeking equitable relief (including without limitation injunctive relief) from any court of competent jurisdiction.

15 GENERAL

15.1 Any variation of the terms of the Contract or these Conditions shall be in writing and signed by or on behalf of the parties.

- 15.2 dB Broadcast shall have no liability to Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.
- 15.3 A person who is not a party to the Contract shall not have any rights under or in connection with it, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise. Notwithstanding that any term of the Contract may be or become enforceable by a person who is not a party to it, the terms of the Contract or any of them may be varied, amended or modified or the Contract may be suspended, cancelled or terminated by agreement in writing between the parties or the Contract may be rescinded, in each case without the consent of any such third party.
- 15.4 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 15.5 If any provision of the Contract or these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.6 Customer shall not, without the prior written consent of dB Broadcast, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. dB Broadcast may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.7 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 15.8 The Contract constitutes the entire and only agreement between the parties in relation to its subject matter and replaces and extinguishes all prior or simultaneous agreements, undertakings, arrangements, understandings or statements of any nature made by the parties or any of them whether oral or written (and, if written, whether or not in draft form) with respect to such subject matter, including any confidentiality or non-disclosure agreements. Each of the parties acknowledges that they are not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter of the Contract, save those expressly set out in the Contract, and that they shall have no rights or remedies with respect to such subject matter otherwise than under the Contract save to the extent that they arise out of the fraud or fraudulent misrepresentation of another party.
- 15.9 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. Subject to clause 14 above, the parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).